

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.07.2012

+ **L.P.A. 617/2011**

**COUNCIL FOR THE INDIAN SCHOOL CERTIFICATE
EXAMINATION**

... Petitioner

Versus

AJAY JHURIA & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr J.K. Das, Sr Advocate with Mr P.P. Nayak, Mr Sandeep Devashish
Das, Mr Swetaketu Mishra and Mr S.K. Das

For the Respondents

: Mr Mohd Safder Imam for R-1

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The only issue which arises for consideration in this appeal from the impugned order dated 30.05.2011 passed by the learned Single Judge of this Court is whether the Council for Indian School Certificate Examination (hereinafter referred to as the Council) is a public authority within the meaning of Section 2 (h) of the Right to Information Act, 2005 (hereinafter referred to as the said Act). The learned counsel for the petitioner submitted that the learned Single Judge has fallen into error in holding that the Council

was a public authority inasmuch as according to the learned counsel the said Council was not at all controlled either by any State Government or the Central Government. The learned counsel for the petitioner also submitted that it was an admitted position that there was no notification or order issued by any Government whereby the said Council was established or constituted. Therefore, the said Council could only be regarded as a public authority if it fell within the definition as given in Section 2 (h) (d) of the said Act, that is, if it was a body owned or controlled or substantially financed, directly or indirectly, by the funds provided by the appropriate Government. According to the learned counsel for the petitioner, the said Council was neither a body owned or controlled or substantially financed by either any State Government or the Central Government and, therefore, it could not, at all be regarded as a public authority.

2. Upon going through the impugned decision we find that the learned Single Judge has been persuaded to hold that the Council was a public authority merely on the basis of the constitution of the membership of the Council. It is an admitted position that the Council is a registered society under the Societies Registration Act, 1860. There is also a letter on record issued on 24.03.2006 by the Ministry of Human Resource Development

which indicates clearly that the Council is not owned or controlled by the Ministry of Human Resource Development. Therefore, according to the learned counsel for the petitioner since the Council is neither owned nor it is substantially financed and, because of the clear statement made in the said communication dated 24.03.2006, nor is it controlled by Central Government, the question of the Council being regarded as public authority does not arise at all.

3. There is yet another aspect of the matter. The definition clause contained in Section 2 (h) of the said Act has reference to ‘appropriate government’. Appropriate Government could either mean the Central Government or the State Government. Clearly the Central Government has indicated that it does not control the Council. Insofar as State Governments are concerned, only one person, namely, the Director of Education of that particular State would be a Member of the Society. Therefore, no particular State would have control over the Council. Consequently, there is *prima facie* some merit in what the learned counsel for the petitioner has contended with regard to the Council not falling within the definition of public authority under Section 2 (h) of the said Act.

4. However, we feel that we need not go into that aspect of the

matter inasmuch as the learned counsel for the petitioner has fairly stated that he is willing to provide all the information that the respondent No.1 is seeking. For this purpose, he states that the petitioner shall even permit the respondent No.1 and all his representatives to visit the office of the petitioner, after seeking a prior appointment, and to inspect the relevant file(s). He shall also be permitted to obtain copies of the documents which he feels would be relevant for his purpose.

5. In view of this offer given by the learned counsel for the petitioner, we feel that we need not go into the question whether the Council is a public authority or not, however, we set aside the impugned order passed by the learned Single Judge as also by the Central Information Commission. We leave the question of, whether the Council is a public authority or not within the meaning of The Right to Information Act, 2005, open and to be decided in an appropriate case.

6. With these observations and directions, the appeal stands disposed of.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 24, 2012/dn